

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

<u>CHARLES WILKERSON,</u>)	
Petitioner,)	
)	
v.)	C.A. No. 05-10972-NG
)	
UNITED STATES OF AMERICA,)	
<u>Respondent.</u>)	
GERTNER, D.J.:		

ORDER OF DISMISSAL

June 6, 2005

Petitioner Charles Wilkerson -- who was sentenced by this Court on December 17, 2001, to 120 months' imprisonment, the mandatory minimum, upon his conviction for distribution of more than five grams of crack cocaine -- urges this Court to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Petitioner argues that he is entitled to a new trial because the government failed to disclose allegedly exculpatory evidence concerning cooperating witness Steven Williams. He also claims that this Court erred in sentencing him by failing to recognize its authority to depart based on extraordinary family circumstances.

Both claims are time-barred. As noted above, petitioner was sentenced on December 17, 2001. He then filed an appeal with the First Circuit, which affirmed his conviction in an unpublished opinion filed December 31, 2002. The Supreme Court denied defendant's petition for a writ of certiorari on May 8, 2003, which is the date his conviction became final. Section 2255

provides a one-year limitations period for filing, which runs from the date on which the judgment of conviction becomes final, absent other circumstances not present here. Petitioner's conviction became final on May 9, 2003, but the instant petition was not filed until May 4, 2005. His petition is, therefore, untimely. Derman v. United States, 298 F.3d 34, 40 (1st Cir. 2002) ("The one-year period for filing a petition challenging a federal court conviction . . . begins to run from and after 'the date on which the judgment of conviction becomes final.'") (quoting 28 U.S.C. § 2255).

The instant petition is **DENIED**, and this action is hereby **DISMISSED**.

SO ORDERED.

Date: June 6, 2005

/s/NANCY GERTNER, U.S.D.J.